IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7995 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ STATE CIVIL SUPPLIES CORPN

Versus

AMBALAL MATHURBHAI PATEL

Appearance:

1. Special Civil Application No. 7995 of 1991
MR DEEPAK V PATEL for Petitioner No. 1
MRS DT SHAH for Respondent No. 1
MRS SANGEETA N PAHWA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 26/03/2004

ORAL JUDGEMENT

Heard learned advocate Mr. Deepak V Patel for petitioner and learned advocate Ms. Sangeeta N Pahwa appearing on behalf of respondent.

2. In the present petition, petitioner has challenged the award passed by the Labour Court in Reference No.884/1989 at Surendranagar wherein the Labour Court has set aside the termination order granting reinstatement with continuity of service with 50% back wages with effect from November, 1989. Learned advocate Mr. Patel appearing on behalf of petitioner submitted that Labour Court has committed gross error in granting the relief in favour of the workman. He submitted that a periodical appointment is given to the respondent and his service has come to an end by efflux of time. Therefore, it is not the case of termination and there is no necessity to comply with Section 25(F) of the Act because he had not completed 240 days continuous service. According to him, he remained in service only five months by periodical order and at the end of the order the service is automatically come to an end, therefore, there is no need to comply any provisions of law, and therefore, the service of the respondent has been rightly come to an end by efflux of time and no need for the petitioner to pass any orders. He has submitted that unless the workman has completed 240 says continuous service, he has no legal right to remain in service. He also submitted that the Labour Court has not appreciated evidence on record and passed an award granting the reinstatement which is erroneous. He also submitted that the Labour Court has committed error in granting 50% back wages to the workman. He relied upon certain decisions reported as under:

(i) 2003 (2) LLJ 494
(ii) 2003 Lab.I.C. 1141
(iii) 2001 (5) SCC 540
(iv) 1997 (2) SCC 556
(v) 1992 (4) SCC 33

Learned advocate Mr. Patel submitted that instead of complying Section 17(b) of the Act, the respondent workman has already been reinstated in service and he is working with the petitioner on the same conditions. Except that no other submission is made by learned advocate Mr. Patel and no other decision has been relied by him.

3. Learned advocate Ms.Sangeeta Pahwa appearing on behalf of respondent has supported the decision given by the Labour Court. She submitted that the respondent was

appointed on vacant post on the post of Driver. By making periodical appointment. She has also disputed the total working days of the workman. But she submitted that according to the terms of the order or condition incorporated in the order, the service comes to end when it is not required by the petitioner. Therefore, she submitted that before the Labour Court petitioner has not justified the action on the ground that now there is no requirement of the respondent to work as Driver. Therefore, so long as requirement is not there, it is required to be established by petitioner and that has not been done, that is how the Labour Court has rightly appreciated the entire matter and no error has been committed which require interference at the hands of this Court.

4. I have considered the submissions made by both the learned advocates. I have also perused the award passed by the Labour Court. I have also perused the appointment order which has been annexed to the petition by the petitioner at pages, 9, 10, 11 and 12. The appointment order which has been issued by the petitioner in favour of the respondent is on the ground that there is a Mobile Van, wherein post of Driver is found to be vacant which is required to be filled up. Therefore, the respondent Ambalal Patel has been appointed in the scale of Rs.260-480 on 29 days basis and he is entitled the salary and other consequential benefits. It is also made clear in the order that the said appointment order is ad hoc without giving any reason and in case the requirement is not there, then his services can be terminated or his service can come to end. Before the Labour Court, statement of claim has been filed by the workman vide Exhibit-4, written statement was submitted by the petitioner vide Exhibit-11 then appointment order has been produced by the respondent vide Exhibit-12, muster roll has been produced and one circular dated 20.1.1986 was also produced. Vide Exhibit-14 the respondent was examined and in his deposition he submitted that after his service come to end one Ranchore Bhai was appointed by the petitioner and he has continued in service. He remained without work (job) and getting Rs,100/- per month by way of miscellaneous work. His name was continued in the employment exchange but he was not appointed through employment exchange. He also deposed before the Labour Court that one Driver was also remained in service as there were two vacancies with the petitioner. Vide Exhibit-17, the witness of the petitioner was examined and according to him these are the appointments made by Mamlatdar and he was not having any details about appointment and termination and he is

also not sure whether such recruitment is from employment exchange or not. But no documentary evidence has been produced by the petitioner before the Labour Court that how many persons have been recruited through employment exchange after following the due process of law. The said witness was also not aware about the fact that at present there are three Drivers and after the service of the respondent come to end who has been appointed, that fact is not also known to the witnesses. Thereafter, Labour Court has examined the condition which has been incorporated in the order of appointment. The Tribunal, has, after considering the terms and conditions of the appointment order come to conclusion that there was a vacant post of Driver though it was appointment on ad hoc basis but this ad hoc appointment will remain continue till their requirement is continued with the petitioner. Therefore, so long as the necessity of work is remain with the petitioner service of the respondent should not have to be terminated. This order has been incorporated by the Labour Court that respondent is entitled to remain in service till they require, and the moment they satisfy that no work is with the petitioner or his presence is not required, the services of the respondent can come to end otherwise, respondent is entitled to remain in service. The circular dated 20.1.1986 which was produced by the petitioner vide Exhibit-20 (1/1) wherein specific direction to terminate the services of all the Drivers those who have not recruited by due process of law and also it is indicated to terminate the service of the Drivers those who have not completed 240 days service. The present respondent service come to an end on 23.5.1983 and the Labour Court has observed that according to the terms and conditions of the appointment order, the petitioner has failed to establish before the Labour Court that there is no need or requirement of the respondent and persons have been appointed after following due process of law. No records have been produced by the petitioner before Labour Court. How many persons have been recruited, through employment exchange no documentary evidence has been produced. Even no details have been given whether these three Drivers who are working with the petitioner whether they were recruited through employment exchange or not. Whether Mr.Bhagwan was appointed after the service of the respondent come to an end, whether he has been appointed after following due process of law or not, no material has been placed on record. Similarly, one Driver Mr.Singh was also remained in service but no material have been produced whether he was recruited after following due process of law. In short, the petitioner has not produced any satisfactory material before the

Labour Court to justify that service of the respondent has come to an end because his services are not required. This aspect has not been established by proper evidence by the petitioner before the Labour Court and therefore, Labour Court has come to conclusion that according to terms and conditions of the appointment order the requirement is there or not, that aspect has not been satisfactorily proved by the petitioner and therefore, the termination is found to be illegal and not justified. The Labour Court has also considered that in light of the terms incorporated in the appointment order Section 2(oo)(bb) also not applicable and ultimately Labour Court has considered some part of gainful employment and granted 50% backwages.

5. The reasoning which has been given by the Labour Court that service of the respondent has not been extended and it has come to end only on the ground that period has been over in appointment order so long as requirement is continued his service cannot come to end, this being condition of the appointment order. Petitioner has failed to justify and satisfy the Labour Court that his requirement is over and now there is no need to have his services with the petitioner. No documentary evidence has been produced that his services come to an end. A new person has been recruited after following due process of law or not. No material evidence has been produced which satisfy the Labour Court. Therefore, in absence of the documentary evidence, Labour Court has rightly appreciated the fact that two persons continued, however, has been appointed subsequently to the respondent termination and whether his appointment prior to the termination. But both were appointed without following due process of law and therefore it is also that appointment does appear temporary just because if any such employee is continued his service cannot be terminated by replacing of the same temporary or adhoc person. Therefore, considering this fact, Labour court has come to conclusion that termination or the service which has been come to end of the respondent is illegal and arbitrary. The Labour Court has also rightly appreciated the facts that appointment of the respondent on the vacant post in the scale, no doubt, without following recruitment procedure, but question is that, termination or service come to end, that is retrenchment within the meaning of Section 2(oo) of Industrial Disputes Act. The case of the respondent does not fall within any exception as mentioned in Section 2(oo) of the Act. The retrenchment has very vide meaning as interpreted by the Apex Court reported in 1990(2) JT 489. Therefore, according to my opinion,

though the workman has not completed 240 days continuous service even though termination of such employee amounts to retrenchment and then Section 25(H) is also applicable to such facts. It is also not necessary that for applicability of Section 25(H) workman must have to be completed 240 days. Section 25(H) is an independent Section as it has nothing to do with compliance of Section 25(F) of the Act. The said view is taken by Apex Court in reported decision JT 1996(7) page 181 in case of Central Bank of India.

6. The decision which has been relied by learned advocate Mr. Patel, the head note has been read out before this Court. I have considered that relevant portion. These are all decisions which are not related to the facts of this case and in none of the decisions, the similar facts of the present case have been examined by the Apex Court, therefore, according to my opinion, the decisions which have been relied upon by learned advocate Mr. Patel are not applicable to the facts of this case.

7. Considering this fact and circumstances as well as the finding given by the Labour Court, according to my opinion, Labour Court has not committed any error while passing such award on the ground that no material evidence has been produced by the petitioner before the Labour Court at the relevant time and still matter remain as it is that service of the respondent come to an end even though his service is required by the petitioner because independent evidence has not been produced or non-requirement was not justified by the petitioner before the Labour Court, therefore, Labour Court has not committed any procedural error while passing such award. There is no necessity to have any interference in such award while exercising powers under Article 227 of the Constitution of India. The present petition is dismissed. Rule discharged. Interim relief, if any, stands vacated.

8. Learned advocate Mr. Patel appearing on behalf of the petitioner has submitted that at the time of granting interim relief by this Court, a condition has been imposed that in case if the petitioner fails in the petition they should have to pay the backwages with 15% interest. Considering the submissions of learned advocates Ms. Sangeeta Pahwa, according to my opinion that condition is required to be deleted as petitioner is a State authority and petitioner shall have to pay the 50% backwages as awarded by the Labour Court.

(H.K.Rathod,J)

Jayanti*